

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3990 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI and
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DAHYABHAI AMBALAL PATEL

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR AJ PATEL and Mr. A.B. Munshi for appellant
Mr.R.C. Kodekar, AGP, for the respondent

CORAM : MR.JUSTICE M.H.KADRI and
MR.JUSTICE J.R.VORA

Date of decision: 05/10/1999

ORAL JUDGEMENT

1. Admitted. Mr. R.C. Kodekar, learned Assistant Government Pleader, waives service of notice on behalf of the respondents. At the request of learned counsel appearing for the parties, all the appeal is taken up for final hearing today.

2. Appellant-original claimant of Land Reference Case No.757 of 1990, has filed this appeal for enhancement of compensation under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, challenging the judgment and award dated November 27, 1997, passed by learned Assistant Judge, Mehsana, in Land Reference Case No.757 of 1990.

3. A proposal was received by the State Government to acquire agricultural lands of village Jaspur, Taluka Kalol, District Mehsana, for the public purpose of 'Narmada Yojana Canal'. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of village Jaspur were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued which was published in the Government Gazette on January 2, 1986. After following usual procedure under the Act, declaration under Section 6 of the Act was made which was published in the Government Gazette on May 4, 1987. Interested persons were, thereafter, served with notices under Section 9(3)(4) of the Act for determination of compensation. The claimant appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.150/- per sq.mtr. On the basis of the material produced before him, the Special Land Acquisition Officer, by his award dated May 17, 1989, offered compensation to the claimant at the rate of Rs.3 per sq.mtr. for acquired agricultural lands. The appellant, being dissatisfied with the award, filed written application under Section 18 of the Act requiring the Land Acquisition Officer to refer the matter to the District Court, Mehsana, which was numbered as Land Acquisition Case No.757 of 1990. According to the claimant, the lands acquired were having fertility and compensation offered by the Land Acquisition Officer was highly inadequate. The respondents filed their written statement at Exh.6, inter alia, contending that the compensation offered by the Land Acquisition Officer was just and adequate, and that the Land Acquisition Officer has taken into consideration all the relevant facts before making his award and the application be dismissed with costs. Upon rival assertions of the parties, necessary issues for determination were raised by the Reference Court at Exh.7. In order to substantiate the claim advanced in the reference application, the claimant examined himself and produced earlier award of the Reference Court at Exh.13 rendered in Land Acquisition References Nos. 750/90 to 756/90, 503/97 to 507/97 wherein the Reference Court determined compensation of

the acquired lands of village Jaspur at the rate of Rs.72/- per sq.mtr. In ultimate analysis, the Reference Court by the impugned award held that the appellant is entitled to compensation at the rate of Rs.40/- per sq.mtr. Hence, the appellant filed the present appeal for enhancement of compensation.

4. We have heard the learned advocates for the parties. We have also gone through the record produced before us.

5. The judgment and award dated June 23, 1997 rendered by the Reference Court in Land Acquisition References Nos. 750/90 to 756/90, 503/97 to 507/97, which was relied upon by the Reference Court for the purpose of determination of market price of the acquired lands in the present case, was challenged before the High Court in First Appeals Nos.43/98 to 54/98, 300/98 to 314/98 and 315/98 to 328/98. The Division Bench of this Court (Coram:J.M. Panchal & R.P.Dholakia, JJ.) partly allowed the appeals by determining the market value of acquired lands of village Jaspur at the rate of Rs.52/- per sq.mtr. Acquired lands of Jaspur, which were subject matter of the abovereferred to First appeals were also acquired by notification published under Section 4(1) of the Act on December 3, 1985. Acquired land of the present appeal is also situated in village Jaspur. It is well settled that the previous award of the Reference Court or the High Court in respect of similar lands of the same village or adjacent lands and which has become final between the parties, can be considered as relevant piece of evidence for the purpose of determining market value of the lands acquired. Therefore, the award of the Division Bench of the High Court in the abovereferred First Appeal is the best piece of evidence for the purpose of determining the market value of the lands acquired in the present case. The Division Bench of this Court has taken into consideration the previous awards of the Reference Court of the surrounding villages and had determined market price of the acquired lands of village Jaspur at Rs.52/per sq.mtr.

6. It requires to be stated that, against the impugned award, the State Government and the Acquiring Body had filed First Appeal No.4091 of 1998 which came to be summarily dismissed on November 25, 1998 by the Division Bench of this Court (Coram:J.M. Panchal, & M.H. Kadri, JJ.). Therefore, the market value of the acquired lands of village Jaspur determined by the Reference Court had become final between the parties.

7. It is clarified that the claimant is not entitled to amounts envisaged under Section 23(1-) and solatium under Section 23(2) of the Act on the amount payable under Section 23(1-A) of the Act and, therefore, the operative part of the order of the Reference Court to that effect will have to be set aside and is set aside.

8. From the impugned award, we find that a direction has been given by the Reference Court to deduct 5% from the amount found payable to the claimant in case of new tenure lands. Such deduction could not have been ordered in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra vs. Babu Govind Gavate, etc AIR 1996 Supreme Court 904. In the said case, it is ruled by the Supreme Court that Section 43 of the Bombay Tenancy and Agricultural Lands Act was enacted to protect the right, title and interest of the tenant who purchased the property and became owner thereof with a view to see that he is not deprived of his ownership, right to possession and enjoyment thereof as a tiller of the soil to perpetuate the object of the Act and under its scheme, previous sanction is a condition precedent for any transfer, but that does not give power to the Government when it acquires the land exercising the power of eminent domain to deduct any amount from the compensation payable to the owner of the land as determined under section 23(1) of the Act. What is emphasized therein is that the sanction required under section 43 is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or a mortgagee, etc. as envisaged under section 43(1), but when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under section 43 does not arise and, therefore, no amount can be deducted from the compensation payable to the owner of the land. In view of the abovereferred to principles laid down by the Supreme Court, direction given by the Reference Court to deduct 5% from the amount of compensation payable to the claimants in case of new tenure lands will have to be set aside.

9. As a result of the foregoing discussion, the appeal is partly allowed. The market value of the acquired lands of village Jaspur is determined at the rate of Rs.52/- per sq.mtr. The direction given by the Reference Court to deduct 5% of the amount from the compensation payable to the claimant in respect of new tenure lands is hereby set aside. The direction given by the Reference Court to pay interest on solatium and solatium on additional amount payable under Section

23(1-A) of the Act is also hereby set aside. Rest of the directions given by the Reference Court regarding payment on solatium interest, etc. are not disturbed and are hereby upheld. There shall be no orders as to costs. The Office is directed to draw decree in terms of this judgment.

(swamy)